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In the Supreme Court of the United States

OCTOBER TERM, 1971

UNITED STATES OF AMERICA, PETITIONER

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the court of appeals sitting *en banc* (App. 1104) and the dissenting opinions (App. 1126 and 1140) are reported at 442 F. 2d 575, 588, and 593, respectively. The order and opinion of the district court entered on motion for preliminary injunction (App. 788, 790) are not reported; the district court's final opinion and order (App. 1062) are reported at 314 F. Supp. 65.

JURISDICTION

The judgment of the court of appeals (App. 1118) was entered on March 23, 1971. The petition for a

writ of certiorari was filed on April 22, 1971, and granted on October 12, 1971 (App. 1152). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals erred, in holding that a state may split a desegregating school district into multiple districts, even if the establishment of a unitary system is thereby impaired, unless the "primary purpose" of the split is to retain as much separation of the races as possible.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the Contitution of the United States provides as follows:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6, is set out in Appendix A to this brief, *infra*, pp. 37–38.

Chapter 31 of the 1969 Session Laws of North Carolina is set out in Appendix B to this brief, *infra*, pp. 39–44.

STATEMENT

A. The School System Before the 1969–70 School Year

Halifax County, North Carolina, is a 722 square-mile rural and agricultural region in the northern part of the State (App. 609).[1] Near the center of the southeastern portion of the County is Scotland Neck, a small town with a population of about 3000 (App. 1063; App. C, *infra*, p. 45). Since 1936 the schools in Scotland Neck have been operated as part of the Halifax County Administrative Unit (App. 1064).[2]

The Halifax County school system consists of eighteen schools: nine elementary schools; one high school; and eight "union" schools, which have students at both the elementary and secondary levels (App. 642). The only school within the town of Scotland Neck was a "union" school. In the school year beginning in 1968, 10,655 students attended schools within the County system; 77 percent of these students were black, 22 percent were white and 1 percent were American Indians (App. 727).[3] Four of the County's schools, in-

[1] The population of the County was 58,956 in 1960 (App. 591,609).

[2] Within the geographic area of Halifax County there are also two smaller, separately administered school units: the Roanoke Rapids unit, and the Weldon unit; each of which is in the northwestern region and is bounded on the north by the County line (App. 605).

[3] There were 8,196 black students, 2,357 whites and 102 American Indians (App. 727).

cluding the Scotland Neck school, were traditionally white only; the other fourteen were black only (App. 635, 1064).

In the years following *Brown I*[4] and *Brown II*[5] the Halifax County school system remained completely segregated on the basis of race (App. 1064). In 1965 the County system adopted a freedom-of-choice plan but little integration resulted and the dual school system continued virtually intact (App. 1064). During the school year 1967–68, all of the white students attended the four traditionally white schools, and 97 percent of the black students attended the other, traditionally all-black schools (App. 823–840). Only 6 percent of the 875 students at the Scotland Neck school[6] were black; at the Brawley school,[7] less than one mile away and across the street marking the corporate limits of Scotland Neck (App. 233), all 1,151 students were black (App. 836, 825).[8] During the 1967–68 school year, 9,872—more than 90 percent—of the students in the County system were transported to school by school buses (App. 648); the school bus system was also segregated on the basis of race (App. 876). There were no attendance zones (App. 816), although the schools tended to serve identifiable areas (App. 273–277).

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[4] 347 U.S. 483.

[5] 349 U.S. 294.

[6] The Scotland Neck school had students from grades 1 to 12 (App. 836).

[7] The Brawley school also served grades 1 to 12 (App. 825).

[8] All of the teachers at Brawley were black; 90 percent of the teachers at Scotland Neck were white (App. 865).

In July 1968, shortly after this Court's decision in *Green* v. *School Board of New Kent County*, 391 U.S. 430, the Department of Justice notified the Halifax County school board, pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6, that the operation of its schools did not comply with constitutional requirements (App. 1064). Negotiations between the Board and the Justice Department resulted in agreement for a plan to disestablish the County's dual school system by the fall of 1969, with interim steps to be taken for the 1968–69 school year (App. 223, 225). The government therefore did not file suit.

The interim steps taken by the Board in the 1968–69 school year pursuant to its agreement with the Justice Department included assignment of the seventh and eighth grades of the all-black Brawley school to the nearby Scotland Neck school (App. 223, 825). These and other assignments, as well as the Board's promise to desegregate completely by the fall of 1969, were given wide publicity in the local press (App. 761, 773).[9]

Shortly before it received the notice letter from the Justice Department in July 1968, the Board had asked the North Carolina Department of Public Instruction to determine the steps necessary for the Board to meet its desegregation obligations and to

[9] In the late summer and early fall of 1968 local newspapers reported that the Board had been ordered to end the dual system, that zoning or pairing of schools would be more effective than freedom-of-choice in doing so, and that integration was increasing in County schools, particularly in Scotland Neck where the proportion of black students had reached 20 percent (App. 761–773).

recommend the "most effective organizational patterns for the County schools in order 'to insure the best education possible for the children' " (App. 759). Pursuant to this request, the State Department of Public Instruction conducted a survey of the County system in 1968. It recommended as an Interim Plan[10] that assignments be made on the basis of four geographic attendance zones, with pairing of grades between some schools (App. 606). For the zone served by the predominantly white Scotland Neck school and the all-black Brawley School, the plan prescribed a zoning-pairing arrangement with all students in grades 10–12 assigned to the Scotland Neck school and those in grade 9 to the Brawley school (App. 606, 608, 681–682). For grades 1–8, students would attend one of the four other area schools in their vicinity,[11] or, if they lived in the immediate area of the Scotland Neck and Brawley schools, those in grades 5-6 would attend Scotland Neck and those in the remaining grades (1–4 and 7–8) would go to Brawley.[12] Under

[10] The survey, dated September 1968, also included a Long Range Plan, suggesting that two new high schools be built, one in the east and one in the west, to serve the entire County system (App. 598).

[11] These schools had traditionally served only grades 1-8 (App. 824, 826, 837, 838).

[12] The area was thus consolidated into a single zone for secondary-level students; all these students would attend either Brawley or Scotland Neck school, depending on their grade level. For the elementary students the area was divided into 5 sub-zones, with children in 4 of the sub-zones assigned to the one school in their immediate area (Bakers, Dawson, Thomas Shields, and Tillery Chapel schools) and students in the 5th sub-zone (Brawley and Scotland Neck schools) assigned as stated in the text (App. 606, 681–682).

this plan an estimated total of 330 white and 740 black students would attend Brawley; 325 whites and 640 blacks would attend Scotland Neck (App. 681–682).

Had the survey's Interim Plan been implemented, some white students would have been assigned to each of the fourteen formerly all-black schools in the County and none of the four previously white schools would have retained a white majority (App. 681).[13] But the County Board declined to implement the Interim Plan and, in February 1969, also repudiated its agreement with the Department of Justice by voting to retain, with respect to the schools in the Scotland Neck-Brawley area, the freedom-of-choice plan under which it had been operating (App. 229, 245, 585–586).

B. Chapter 31, 1969 Session Laws of North Carolina

Shortly thereafter, on March 3, 1969, the North Carolina General Assembly enacted Chapter 31, 1969 Session Laws of North Carolina (App. B, *infra*, pp. 39–44). This local law provided for a new school district bounded by the corporate limits of Scotland Neck and a supplemental tax assessment, upon approval by a majority of the city's voters. In a special election held on April 8, 1969, the voters approved [14]

[13] Only the formerly all-black Everetts elementary school in the northwestern section of the County (App. 829) would have had a slight white majority.

[14] The vote was 813 for and 332 against (App. 1069). The total number of registered voters was 1382; of these, 360 were black (App. 104–105).

and thereafter some preliminary steps were taken so that the newly-created Scotland Neck City Administrative Unit could start operation at the beginning of the 1969–70 school year (App. 1069–1070).

Chapter 31's implementation would have resulted in carving out of the Halifax County system, which had a total of 10,655 students, a smaller school district of 695 students, of whom 399 were white and 296 were black (App. 1071). This legislation thus created an enclave, 57 percent white and 43 percent black, from a school system having a 22 percent white and 77 percent black student population.[15]

When introduced, Chapter 31 met immediate opposition, principally on the ground that the bill adversely affected desegregation of the County schools. In remarks to a legislative committee, Dr. Craig Phillips, State Superintendent of Public Instruction for North Carolina, opposed the bill mainly on the ground that it was contrary to the trend of consolidating school districts, and also expressed concern that it would increase, rather than decrease, the desegregation problem facing the Halifax County schools (App. 163–168, 1069).[16] Black citizen groups,

[15] Prior to 1969, the last time a separate school administrative unit was created in North Carolina was in 1954 (App. 173). In 1965, there was an unsuccessful legislative proposal for a separate school system within Halifax County which included not only the town of Scotland Neck but also the portion of the surrounding area served by four of five all-black schools (App. 319, 1066–1067). Under that proposal the students would have been about 3 to 1 black (App. 824–826, 836, 838), and would have continued to be assigned under freedom-of-choice (App. 352).

[16] Dr. Phillips had given the same warning privately to the bill's principal proponents when it was introduced (App. 161–163).

especially one led by Reverend Deloatche, opposed it, as did the superintendent of the Halifax County system (App. 1069). As newspaper accounts observed, the proposed new city system would establish "an educational island dominated by whites," and, "[b]y creating a sharper racial imbalance in municipal schools, the town would promote a sharper imbalance —in reverse—out in the county" (App. 785).

Henry L. Harrison, for 13 years a member of the Halifax County Board of Education until he resigned in December 1968, testified that as one of the bill's chief proponents, he had told the legislature that the Scotland Neck area had lost 55 children to segregated private schools and that something had to be done to prevent further flight of white students (App. 369–370, 1074). This was the only point he made to the state legislature (App. 369–370). Another principal proponent, Frank P. Shields, stated that the bill's proponents were concerned about the loss of whites to private schools, and felt that private schools provide education inferior to that of public schools. Together with most of the townspeople, the proponents were convinced, Shields stated, that the local bill was a better solution than private schools to the white flight problem (App. 431–433, 1074–1075). Shields also expressed the view that the bill was a better alternative than pairing the Scotland Neck school with the Brawley school (App. 431).

The Chairman of the Halifax County Board of Education, C. M. Moore, testified that, at the time the Scotland Neck bill had been introduced, he had stated

that the proposed separate school unit would be good for the people of Scotland Neck in view of the fact that black students outnumber white students in the Halifax County system by about four to one (App. 125). He added that the County unit was every day losing white children to private schools, and that in the following year (1969–70) the system might lose a large number (App. 126). He stated that the people in Scotland Neck wanted the separate system as an alternative to private schools (App. 126–127).[17]

A number of witnesses also testified that the bill would give the residents of Scotland Neck more control over their school and would enable them to have a supplemental local tax, both of which the residents considered desirable (App. 1073–1075). Dr. Phillips believed that the bill reflected the people's "concern about the quality of education" for the children of Scotland Neck (App. 1074). However, prior to the bill's introduction no studies were made regarding educational advantages of the new district and no plans were made regarding how the supplement would be spent, although some people assumed it would be used to increase teachers' salaries (App. 240, 1076).

[17] Counsel for the Scotland Neck City Board of Education stated in argument before the district court that Chapter 31 had as its intended effect, retention of an acceptable white-black ratio and prevention of white flight (App. 1074; Tr. 117–118).

After Chapter 31 went into effect, the newly-appointed members of the Scotland Neck Board of Education devised a plan for transfer of students between the County system and the new system (App. 1070–1071). By the end of August 1969, 350 white and 10 black students residing in the County outside Scotland Neck had applied for transfer into Scotland Neck school for 1969–70; 44 black and no white students from the Scotland Neck system had applied to transfer out to the nearby all-black Brawley school in the County system (App. 1071).[18] This would have resulted in a total of 749 white students and 262 black students in the newly-created Scotland Neck unit. Thus, for the 1969–70 school year Scotland Neck school would have consisted of 74 percent white and 26 percent black students—approximately the same white-black ratio that existed in the preceding year and a nearly complete reversal of the ratio under the State Survey's Interim Plan to disestablish the County's dual school system by 1969[19] and of the ratio for the County system as a whole. Since the school facilities within the corporate limits of Scotland Neck were insufficient to accommodate even the 695 resident students, the Scotland Neck Board leased

[18] Scotland Neck charged a fee for the transfers into the system: $100 for the first child in a family; $25 for each of the next two children; and all others free-of-charge (App. 1071).

[19] Under this plan, an estimated 325 (34%) white students and 640 (66%) black students would have attended Scotland Neck school, see p. 7 *supra*. The white-black ratio for the entire County system was 22:77.

from the County the former Scotland Neck Junior High School building, which was just outside the boundary of the new district (App. 233, 253–255).

Chapter 31 is directly contrary to the State's policy, as expressed by state education officials, that schools and school districts should be consolidated, not balkanized, in order to achieve increased efficiency and effectiveness in the operation of public schools (App. 1075). The North Carolina Governor's Study Commission report of December 1968, which was endorsed by Dr. Craig Phillips, State Superintendent of Public Instruction, and supported by the North Carolina Teachers' Association (App. 261), approved as a desirable district one with 9,000 to 10,000 pupils, and as a minimally acceptable district one with 3,500 to 4,000 pupils (App. 688, 702).[20] The 1968 State Survey made on behalf of the Halifax County system recommended consolidation of the schools and school districts within the County (App. 587, 597–600).

C. The Proceedings Below

The government's complaint in this action, filed on June 16, 1969, under Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6, sought an order to desegregate the Halifax County school system and an injunction against the operation of Chapter 31 (App.

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[20] Although some of the smaller school districts within the State ranked high in comparative teacher-pupil ratios, library books-pupil ratios and the like, the State Superintendent of Public Instruction explained that in no sense was this ranking intended nor should it be used, as an educational evaluation of the systems (App. 184).

26).[21] The district court, with both judges sitting,[22] found that Chapter 31 had "the effect of creating a refuge for white students of the Halifax County School system, and interferes with the desegregation of the Halifax County School system, in accord with the plan adopted by said Board * * *." 314 F. Supp. at 78 (App. 1083).[23] Further finding that Chapter 31 "was at least partially motivated by a desire to stem the flight of white students from the public schools" and "prevents the Halifax County Board of Education from complying with the orders of this court is-

[21] Scotland Neck City Board of Education was added as a defendant by the government's amended complaint of August 15, 1969 (App. 62).

Other persons later intervened as plaintiffs, including two Halifax County teachers and a number of minor school children in the Scotland Neck System on behalf of themselves and all other black public school teachers, parents and students similarly situated (App. 1062 n. 1, 1063). The Attorney General of North Carolina, on behalf of the State, also intervened as a defendant (App. 1063).

[22] There was a consolidated trial on the merits of the instant case and *Turner* v. *Warren County Board of Education*, 313 F. Supp. 380 (E.D.N.C.). Warren County is adjacent to Halifax County on the west; the town of Littleton lies partly in both counties. The *Turner* case involved the carving out of two separate city administrative units from the Warren County system; the district court's order and opinion enjoining that action was affirmed *sub nom. Turner* v. *Littleton-Lake Gaston School District*, 442 F. 2d 584 (C.A. 4).

[23] In its amended answer to the government's complaint, the School Board stated that it intended to allow only such transfers as "may be in conformity to the law and/or Court order or orders applicable to Defendant, and in conformity to a plan of limitation of transfers to be prepared by Defendant and submitted to this Court" (App. 796). See, also, 442 F. 2d at 592 (App. 1146–1147) (Winter, J., dissenting).

sued in protection of constitutional rights,"[24] The court issued, on May 23, 1970, an order enjoining the operation of Chapter 31.[25]

On appeal the court of appeals sitting *en banc*[26] reversed, 442 F. 2d 575 (App. 1104), with Judges Sobeloff, 442 F. 2d 593 (App. 1126), and Winter, 442 F. 2d 588 (App. 1140), dissenting. The court held that Chapter 31 did not interfere with the desegregation of the Halifax County schools, that it did not create a white refuge, and, under the "primary pur-

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[24] On November 24, 1969, the district court had ordered the Halifax County Board of Education to submit a plan by December 15, 1969, to end the entire dual system (App. 923–924). Earlier the court had ordered the Board to reconsider the Interim Plan recommended by the State Department of Public Instruction (see pp. 5–7 *supra*).

[25] The district court, on November 3, 1969, had dismissed the Halifax County Board of Education from the portion of the case dealing with the constitutionality of Chapter 31 (App. 812).

On May 19, 1970, the district court ordered the Halifax County Board of Education to desegregate its school system, including Scotland Neck, pursuant to the Interim Plan proposed by the State Department of Public Instruction, see pp. 5–7 *supra*, as modified by certain proposals of the Board (App. 1098). Under the modified Interim Plan, Scotland Neck school served only grades 10–12 for District I; Brawley served grade 9 for the entire District and grades 1–8 for students in the immediate vicinity of Scotland Neck and Brawley; the four remaining elementary schools in District I served grades 1–8 for students in their vicinity (App. 1098, 1100).

[26] After argument on September 16, 1970, before a panel of three judges, the case was reargued before the court *en banc* on December 7, 1970, along with the appeal in *Turner* v. *Littleton-Lake Gaston School District*, 442 F. 2d 584, and *Wright* v. *Council of the City of Emporia*, 442 F. 2d 570, certiorari granted, October 12, 1971, No. 70–188.

pose" test formulated in *Wright* v. *Council of the City of Emporia*, 442 F. 2d 570, 572, certiorari granted, October 12, 1971, No. 70–188, decided by the court on the same day, that two non-racial justifications adequately explained the secession of Scotland Neck, even assuming that a more even racial balance would be more effective in creating a unitary system in Halifax County, 442 F. 2d at 583 (App. 1116).[27]

[27] The district court had found that "the following motivating forces were responsible for the design of the legislation creating the separate Scotland Neck school district: (1) the desire to improve the education level in the Scotland Neck schools, the present conditions in those schools having been brought about by a lengthy history of neglect and discrimination with respect to financial allocations to the Scotland Neck schools by the Halifax County Board of Education; (2) a desire on the part of the leaders of Scotland Neck to preserve a ratio of black to white students in the schools of Scotland Neck that would be acceptable to white parents and thereby prevent the flight of white students to the increasingly popular all-white private schools in the area; (3) a desire on the part of the people of Scotland Neck to control their own schools and be in a position to determine their direction with more finality than if the schools were a part of the Halifax County system. In ascertaining such a subjective factor as motivation and intent, it is of course impossible for this Court to accurately state what proportion each of the above reasons played in the minds of the proponents of the bill, the legislators or the voters of Scotland Neck, but it is sufficient to say that the record amply supports the proposition that each of the three played a significant role in the final passage and implementation of Chapter 31." 314 F. Supp. at 72 (App. 1073). The court of appeals stated: "There is evidence in the record to show that the three purposes that the District Court found were intended by the proponents of Chapter 31 were presented to the Legislature." 442 F. 2d at 582, n. 3 (App. 1113–1114 n. 3).

The court did, however, enjoin the proposed transfer plan on the ground that it would tend to resegregate the school systems (App. 1117).[28]

INTRODUCTION AND SUMMARY OF ARGUMENT

Over the years that passed after *Brown I*, Halifax County continued to operate a dual school system. In the summer of 1968 the Halifax County Board of Education at last faced up to its constitutional duty by agreeing to a plan to desegregate its schools, but the Board subsequently repudiated the agreement and Scotland Neck, a majority white enclave in the predominantly black system, was purportedly removed by special legislation from the County school system. This, in brief, is the setting of the present litigation.

Scotland Neck's secession would significantly impede desegregation of the County school system. If the secession were effective, the traditionally all-white Scotland Neck school could not be paired with the all-black Brawley school nearby, even though when operated on a segregated basis both schools served the same grades and the same area. Instead of reflecting the racial composition of the students in that area, as they would if the schools were desegregated as part of the same system, Scotland Neck school would be 57 percent white and 43 percent black while Brawley school, less than one mile away, would be 90 percent black and 10 percent white. In addition, by remaining the identifiably "white" school for the area, Scotland Neck would, and in fact did, attract white students

[28] The court of appeals stayed its mandate on April 21, 1971 (App. 1151).

from the surrounding region; thus, the secession would be likely to induce shifts in residential patterns that would tend toward even greater resegregation.

The constitutionality of the carving out of a new school district from a larger, segregated district should be adjudged in light of the state's obligation to convert the dual school system to a unitary system in which the racial segregation of the past is entirely uprooted. Where, as in this case, the new state law impedes disestablishment of the dual school system and the prior existence of the larger district promoted and facilitated the operation of a dual system, creation of new boundaries that bring about significantly less desegregation is, we submit, not constitutionally permissible unless there is a showing of compelling justification.

The court of appeals erred in holding that unless the "primary purpose" of the secession is discriminatory, there is no denial of equal protection of the laws. It is undisputed that one of the purposes of Chapter 31 was to separate a predominantly white group of students from a predominantly black group. The Act clearly had that effect. Even assuming, therefore, that the "primary" purpose or motive of such legislation can accurately be determined by a court, there was no need for such a determination here. For neither in *Brown* v. *Board of Education*, 347 U.S. 483, nor in any subsequent case has this Court distinguished between racial segregation with a predominantly racial purpose and racial segregation with a racial purpose of some lesser degree; the Constitution does not permit a state to be some or just a little bit discriminatory.

The relevant question is, accordingly, whether the state has shown a compelling non-racial justification for impeding desegregation—and thus that the racial effect of its action is non-discriminatory. The purposes of the action it has taken bear on that showing. And if one of the purposes is racial, this necessarily reinforces the stigma of implied racial inferiority that a dual school system fosters and that conversion to a unitary system is designed to eliminate. Thus, if in addition to impeding desegregation, the legislation has a racial purpose, this perpetuates the very evil that *Brown* sought to eliminate.

In this case, the justifications offered for Chapter 31, particularly in view of the available alternatives, are plainly inadequate to overcome the interests of the children of Halifax County in a unitary, nonracial school operation. "Local control," if desired, could have been achieved through creation of a school unit more nearly approximating the racial composition of the County system; in 1965 area residents in fact proposed such a district. Moreover, by narrowing the proposed district to include only Scotland Neck, Chapter 31 conflicts with the state education agency's uncontroverted study and recommendations regarding improvement of the quality of education in the County system. And, of course, the State could have provided for the special financial needs of the Scotland Neck school and of the County system by other means, if this were found necessary. In the face of a history of racial segregation, however, the state cannot constitu-

tionally create a predominantly "white" district for the school to be "improved" and a separate, predominantly black district for the other schools. The district court correctly held that there was no compelling state interest in improving the schools in that way.

ARGUMENT

Creation of new school districts, like gerrymandered zoning within a school district, can perpetuate existing dual operations or impede desegregation efforts. Here the district court found that creation of the Scotland Neck City Administrative Unit interfered with desegregation of the Halifax County schools. In reaching a contrary conclusion, the court of appeals, we submit, did not give due regard to the setting within which Chapter 31 was enacted, the intended effect it would have on the Halifax County schools immediately surrounding Scotland Neck, and the long-range consequences of a separate Scotland Neck unit, which had already attracted white students away from the Halifax County school system.

I

THE SEPARATION OF SCOTLAND NECK FROM THE HALIFAX COUNTY SYSTEM WOULD PERPETUATE VESTIGES OF THE DUAL SCHOOL SYSTEM.

Under Chapter 31 Scotland Neck pulled out of a school system moving reluctantly but definitely toward integration after 15 years of noncompliance with the mandate of *Brown*. It is only against this background that the effect of Chapter 31 can accurately be assessed. See *Green* v. *County School Board of New*

Kent County, 391 U.S. 430, 437.[29] When the schools of Halifax County operated on a dual basis, the town of Scotland Neck and its environs were served by two grade 1–12 schools, Scotland Neck and Brawley, and a few scattered elementary schools.[30] Scotland Neck school served all the white students in the region; the Brawley school, less than one mile away, served only black students.[31] Because of the size of the region, the proximity of the two schools, and the large percentage of whites who lived within the corporate limits of Scotland Neck, it appeared that the only way to convert the dual system to a unitary, nonracial system would be to pair the two grade 1–12 schools.[32] That was the remedy eventually chosen by the Halifax County Board of Education and approved by the district court.[33] See *McDaniel* v. *Barresi*, 402 U.S. 39, 41.

[29] Because of its overriding concern with the motivation for the enactment of Chapter 31 (see point II, *infra*), the court of appeals directed its attention primarily to the previous efforts to obtain a separate system including Scotland Neck rather than to the history showing the likely effect of the Act. See 442 F. 2d at 580 (App. 1110–1111).

[30] See map attached as Appendix C to this brief, p. 45, *infra*. The map shows the grade structure under the court-ordered desegregation plan. See note 25, *supra*. Previously, Scotland Neck and Brawley had served grades 1–12, and the other schools had served grades 1–8. See pp. 3–4, *supra*.

[31] Brawley is located on the County side of the street that serves as the city limits of Scotland Neck. See Appendix C, *infra*, p. 45.

[32] Within the described zone, the operation of the schools was essentially the same as that in *Green* v. *County School Board of New Kent County*, 391 U.S. 430, and *Raney* v. *Board of Education of the Gould School District*, 391 U.S. 443, except for the fact that a large percentage of the white students lived in one particular area (Scotland Neck).

[33] See note 25, *supra*.

Chapter 31 had a profound effect on the Board's ability to disestablish its dual school system. By totally removing the school in Scotland Neck and the students residing there, Chapter 31 insulated Scotland Neck from the imminent desegregation of the County system. Had it been fully implemented, Chapter 31 would have effectively "zoned" most of the black students in the region out of the Scotland Neck school, and zoned the white students residing in Scotland Neck out of Brawley. As a result, the Brawley school would have been left with a 90 percent black student population while the student body at the Scotland Neck school would have been 43 percent black.[34] The doors of the traditionally white-only Scotland Neck school had in the past been closed for the black students in the area, not because of where they resided but because of their race. With Chapter 31 fully in effect those doors would remain closed; the County school board, although charged with the duty to end its dual school system immediately, would be deprived of its authority to open them.

Thus, instead of the Scotland Neck and Brawley schools having nearly the same white-black ratio,[35] reflecting the student population of the area traditionally served by both schools on a segregated basis, under Chapter 31 Scotland Neck would remain the identifiably "white" school for the region. The local

[34] Defendants' Ex. A, dated June 24, 1970, reprinted in App. 12b to brief of intervenors Pattie Black Cotton, *et al.* The disparity would have been even greater under the transfer plan, see p. 11 *supra*.

[35] Under the Interim Plan proposed by the State Department of Public Instruction, the white:black ratio in both schools would have been approximately 1:3 (App. 681–682).

proponents of the Act of course recognized this and, to the students in the area, the message was clear. By August 1969, 350 white students sought transfers from the Halifax County system into Scotland Neck; not a single white student sought to transfer out of Scotland Neck (see *supra*, p. 11). Under the standards applied by federal courts in reviewing school board desegregation plans, therefore, a proposal such as Chapter 31 would not be acceptable. See, *e.g.*, *Henry* v. *Clarksdale Municipal Separate School District*, 409 F. 2d 682 (C.A. 5), certiorari denied, 396 U.S. 940; *United States* v. *Indianola Municipal Separate School District*, 410 F. 2d 626 (C.A. 5), certiorari denied, 396 U.S. 1011. Compare *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 26.[36]

Indeed, the adverse effect of Chapter 31 went beyond even its immediate impact. As the district court held, Chapter 31 was "enacted with the effect of creating a refuge for white students of the Halifax County School system." 314 F. Supp. at 78 (App. 1083). The proponents of the legislation knew that the implementation of Chapter 31 would attract white students to the newly created Scotland Neck system and urged passage of the Act for that reason. The first returns on the transfer arrangement plainly show that

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[36] See also *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33, where this Court rejected a desegregation plan that treated the western section of the district in isolation from the eastern, and *Green*, *supra*, 391 U.S. at 442, where the Court held that an acceptable desegregation plan must "promise realistically to convert promptly to a system without a 'white' school and a 'Negro' school, but just schools."

Chapter 31 had just that effect. In *Swann* this Court observed that "[p]eople gravitate toward school facilities," 402 U.S. at 20. See also *United States* v. *Jefferson County Board of Education*, 372 F. 2d 836, 876 (C.A. 5), affirmed *en banc*, 380 F. 2d 385, certiorari denied *sub nom. Caddo Parish School Board* v. *United States*, 389 U.S. 840. In light of past experience, of opinions expressed by the proponents of Chapter 31, and the evidence presently available, Scotland Neck's secession would be likely to have a substantial impact on future residential patterns. See *Swann, supra*, 402 U.S. at 20–21. The pressure would be in the direction of a Scotland Neck system approaching roughly the same racial characteristics that would have resulted from the proposed transfer provision, which even the majority of the court of appeals held would tend "toward establishment of a resegregated system." 442 F. 2d at 583 (App. 1117).[37]

II

STATE STATUTES THAT RESTRUCTURE DESEGREGATING SCHOOL SYSTEMS BEAR A HEAVY BURDEN OF JUSTIFICATION IF DESEGREGATION IS THEREBY IMPAIRED

The court of appeals declined to "view the results of severance as if it were part of a desegregation plan for the original system" because the severance was "an action by the Legislature redefining the boundaries of local governmental units" (442 F. 2d at 583;

[37] The free transfer arrangement was thus invalid, as the court of appeals held. *Monroe* v. *Board of Commissioners*, 391 U.S. 450.

App. 1115). But a state's power to "establish, destroy, or reorganize by contraction or expansion its political subdivisions" is not absolute. *Gomillion* v. *Lightfoot*, 364 U.S. 339, 342. Where new school districts have been formed by action of local governmental units under general enabling statutes of a state, the federal courts have properly treated those new districts under the *Green* and *Swann* standards as though they were part of the original district. *Lee and United States* v. *Macon County Board of Education*, 448 F. 2d 746 (C.A. 5); *Burleson* v. *County Board of Election Commissioners of Jefferson County*, 308 F. Supp. 352, 357 (E.D. Ark.), affirmed, 432 F. 2d 1356 (C.A. 8).

Since the obligation to provide a constitutional system of public education is ultimately the state's (see *Griffin* v. *County School Board*, 377 U.S. 218), there is no reason to apply a different standard merely because "rezoning" is brought about by state legislation. Cf. *Bush* v. *Orleans Parish School Board*, 188 F. Supp. 916, 922 (E.D. La.), affirmed, 365 U.S. 569.[18] In both situations the constitutionality of the changes made in the formerly segregated school system are to be judged in light of the state's obligation "to take whatever steps might be necessary to convert to a unitary system [of school operation] in which racial discrimination [is] * * * eliminated root and branch."

[18] It is of no legal consequence that the reorganization involved here was accomplished in part by the referendum process. *Lucas* v. *Forty-Fourth General Assembly*, 377 U.S. 713; *Reitman* v. *Mulkey*, 387 U.S. 369; *Hunter* v. *Erickson*, 393 U.S. 385.

Green, supra, 391 U.S. at 437–438.[39] See also *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15.

Recently, in declaring unconstitutional a state statute that "would inescapably operate to obstruct the remedies granted by the District Court," this Court stated:

> [I]f a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.

North Carolina State Board of Education v. *Swann*, 402 U.S. 43, 45. It should make no difference that the "state-imposed limitation" is enacted before the school board is actually under order by a federal court to desegregate. This is particularly so in a case such as this where the Halifax County Board had agreed to desegregate and court action became necessary only after the Board repudiated its agreement (see p. 5 *supra*). In view of the state's constitutional duty to uproot racial segregation altogether and at once, see *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, the relevant question in each instance

[39] In another context of racial discrimination, this Court defined the federal court's power and duty, and thus the state's obligation, as elimination of the "discriminatory effects of the past as well as to bar like discrimination in the future." *Louisiana* v. *United States*, 380 U.S. 145, 154.

is whether the state law hinders disestablishment of the dual school system.

Where, as here, the utilization of a consolidated district facilitated and promoted the operation of a dual system, the creation of new boundaries that would impair disestablishment of the dual system by causing significantly less desegregation should not be permitted to stand unless there is a showing of compelling justification. See *Lee* v. *Macon County Board of Education*, (C.A. 5 No. 30154, June 29, 1971), slip op. at pp. 11–12. Judged by these standards, Chapter 31 plainly denied equal protection of the laws to the school children of Halifax County.[40] For them, Chapter 31 reinforces and perpetuates the stigma of implied racial inferiority that existed while Scotland Neck school was all-white and Brawley was all-black. The vestiges of the dual system can be eliminated only if, for the purpose of desegregation, both schools are treated as part of the same system under which racial segregation existed.

The court of appeals, however, judged the constitutionality of Chapter 31 on the basis of the test it formulated in the *Emporia* case:

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[40] In point III *infra* we contend there has been no showing of compelling justification in this case.

> If the creation of a new school district is designed to further the aim of providing quality education and is attended secondarily by a modification of the racial balance, short of resegregation, the federal courts should not interfere. If, however, the primary purpose for creating a new school district is to retain as much of separation of the races as possible, the state has violated its affirmative constitutional duty to end state supported segregation. [442 F. 2d at 572.]

This "primary purpose" test is, we submit, inconsistent with the test applied by this Court in *North Carolina State Board of Education, supra,* and has no basis in prior decisions of this Court assessing the constitutionality of state laws.

Here the record shows, and both courts below agreed,[41] that one purpose of Chapter 31 was to separate a predominantly white group of students from a larger, predominantly black group of students. The Act clearly had that effect. As with any legislation, there may have been other motives or reasons behind its enactment.[42] But in the sensitive area of school desegregation, the prophesy that there will often be a number of reasons for secession runs a substantial

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[41] 314 F. Supp. at 72 (App. 1073) and 442 F. 2d at 581 (App. 1112).

[42] The possible variety of mixed motives is well illustrated by such cases as *Buchanan* v. *Warley*, 245 U.S. 60 (maintenance of public peace and property values); *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, 260 (fear of economic loss); and *Hunter* v. *Erickson*, 393 U.S. 385, 392 (need to move slowly in a delicate area of race relations).

risk of becoming self-fulfilling, as Judge Sobeloff suggests in dissent (442 F. 2d at 594; App. 1128). Moreover, in *Palmer* v. *Thompson*, 403 U.S. 217, 225, this Court observed that it "is difficult or impossible for any court to determine the 'sole' or 'dominant' motivation behind the choices of a group of legislators."[43] We add that in the situation presented here it is also unnecessary.

This Court held in *Palmer* that the dominant motive or purpose of the legislators cannot by itself serve to invalidate the legislation. Similarly, their "primary purpose" cannot in itself validate it, at least where, as here, one of the reasons for the enactment was discriminatory.[44] In holding that state-imposed "[s]eparate education facilities are inherently unequal," *Brown* v. *Board of Education*, 347 U.S. 483, 495, this Court did not distinguish between racial segregation with a 40 percent racial purpose and racial segregation with a 60 percent racial purpose. "There is no such thing as a State's legitimately being just a little bit discriminatory." *Poindexter* v. *Louisiana Financial Assistance Commission*, 275 F. Supp. 833, 835

[43] Indeed, the district court here found the task impossible: "In ascertaining such a subjective factor as motivation and intent, it is of course impossible for this Court to accurately state what proportion each of the above reasons played in the minds of the proponents of the bill, the legislators or the voters of Scotland Neck * * *." 314 F. Supp. 65, 72 (App. 1073).

[44] See *Palmer* v. *Thompson*, *supra*, 403 U.S. at 226 ("Petitioners have argued strenuously that a city's possible motivations to ensure safety and save money cannot validate an otherwise impermissible state action. This proposition is, of course, true.").

(E.D. La.), affirmed, 389 U.S. 571. Indeed, however innocent its motives, a state may not simply ignore the racial consequences of its actions, for it has long been settled that "[w]hat the Fourteenth Amendment prohibits is racial discrimination * * * whether accomplished ingeniously or ingenuously * * *." *Smith* v. *Texas*, 311 U.S. 128, 132. *See Cooper* v. *Aaron*, 358 U.S. 1, 17.

This is not to say that purpose is irrelevant. To the contrary, if, in addition to having the effect of impeding desegregation, the legislation has a racial purpose, the stigma of implied racial inferiority is not only perpetuated, but intensified. Moreover, the state's burden of coming forward with a compelling justification for its action necessarily draws into question the purpose of the legislation; if one of the purposes is racial, this is a relevant factor in assessing whether the state has met that burden.

In sum, since both courts below found that at least one purpose of Chapter 31 was to separate, for racial reasons, a "more white" school district from a "more black" school district, and since the Act had that effect to the detriment of desegregation of the Halifax County school system, the appropriate standard for measuring compliance with the Fourteenth Amendment and for securing the promise of *Brown I*[45] and *Brown II*[46] is that applied by this Court in reviewing other state laws or actions that impinge

[45] *Brown* v. *Board of Education*, 347 U.S. 483.
[46] *Brown* v. *Board of Education*, 349 U.S. 294.

upon fundamental rights [47] or are based on "suspect criteria." [48] In our view, that standard is no different in substance from the "heavy burden * * * [placed upon a school board] to explain its preference for an apparently less effective method [of desegregation]." *Green, supra,* 391 U.S. at 439. See also *Swann, supra,* 402 U.S. at 26. *Green* and *Swann* and the federal court cases applying those decisions provide, we submit, the informed body of law against which this Court should measure Chapter 31 in light of the setting of the Act, the available alternatives, and the magnitude of the state's interest in pursuing that particular course of action.[49]

As noted above, Chapter 31, if implemented, would impede the establishment of a nonracial, unitary school system for the students of Halifax County. To remedy that situation, the district court could have permitted the continuance of Scotland Neck as a separate system but required that, for the purposes of student and faculty assignment, the schools would be

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[47] *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (interstate travel); *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 626, and *Cipriano* v. *City of Houma*, 395 U.S. 701, 704 (voting); *Sherbert* v. *Verner*, 374 U.S. 398, 406 (exercise of religion); *Bates* v. *Little Rock*, 361 U.S. 516, 524 (freedom of association); *Loving* v. *Virginia*, 388 U.S. 1, 11 (right to marriage).

[48] *Korematsu* v. *United States*, 323 U.S. 214, 216, and *McLaughlin* v. *Florida*, 379 U.S. 184, 191–92 (race); *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 668 (wealth). See also *Bolling* v. *Sharpe*, 347 U.S. 497, 499–500.

[49] See cases cited in footnotes 1 through 5, 442 F. 2d at 593–594 (dissenting opinion of Judge Sobeloff) (App. 1126–1127).

treated as part of the Halifax County system. It is not clear, however, that the citizens of Scotland Neck would want to operate a separate system in those circumstances, and the remedy chosen by the district court—invalidation of the Act—does not preclude their seeking new legislation should they desire to operate in that manner in the future.[50] Either remedy would be appropriate here.

III

THE REASONS GIVEN FOR ESTABLISHING THE SCOTLAND NECK CITY SCHOOL SYSTEM DO NOT SATISFY THE DEFENDANTS' HEAVY BURDEN OF JUSTIFICATION

The defendants asserted three reasons for the creation of the Scotland Neck City Administrative Unit: (1) desire for more local control over the schools; (2) need to increase expenditures for the school; and (3) prevention of anticipated white flight from the public schools. The third reason, of course, provides no ground for continuing a dual system of schools, *Monroe* v. *Board of Commissioners, supra,* 391 U.S. at 459; compare *Buchanan* v. *Warley,* 245 U.S. 60, 81; *Brown* v. *Board of Education,* 349 U.S. 294, 300; *Cooper v. Aaron,* 358 U.S. 1, 16; *Wright* v. *Georgia,*

[50] Even to this limited degree, Scotland Neck is not forever "locked-in" to the Halifax County school system. When desegregation of the County system takes place and the subsequent passage of time cleanses the taint of racial segregation, the situation will of course be different. But, as we have emphasized, the validity of Chapter 31 should now be determined in light of the fact that it came in the wake of 15 years of failure to comply with *Brown.*

373 U.S. 284, 291–293, and clearly does not justify the racial effect of Chapter 31.

Especially in light of the alternatives available, the other two reasons are, in our view, also plainly insufficient as justification to override the constitutional right of the students of Halifax County to a school system operated entirely without racial discrimination. In assessing the state interest involved, it is significant that the proponents' desire for "local control" apparently never arose until 1965,[51] and that sufficient impetus for enabling legislation was not obtained until the eve of full-scale desegregation in 1969. Moreover, the legislation proposed in 1965 encompassed an area larger than the limits of the City of Scotland Neck, including the nearby Brawley School, and the resulting student population would have nearly approached the racial composition of the County as a whole.[52] By narrowing the area to be covered, the defendants have chosen to operate a school district more clearly of a size directly in conflict with the recommendations of the state education agency.[53]

While the defendants contend that with local control they could spend more money on their schools and thus improve the quality of education, they did not have any actual plans for spending the extra money nor had they made any advance studies of the educational advantages, if any, of the new district (see 442 F. 2d at 599, App 1136–1137). That failure is especially signif-

[51] See not 15, *supra*.
[52] *Ibid*.
[53] See p. 5–7, *supra*.

icant since they did not have sufficient facilities to accommodate even the small number of students in the new district.[54] Normally, such a choice would be explicable only in terms of race. *Lee* v. *Macon County Board of Education* 267 F. Supp. 458, 472 (M.D. Ala.), *affirmed sub nom. Wallace* v. *United States*, 389 U.S. 215.

In any event, we are dealing here with legislation by the state; and it is clear that, whatever options were available to the local proponents, the state legislature could have dealt with the Scotland Neck problem by other means. Cf. *Griffin* v. *County School Board*, 377 U.S. 218. Indeed, the state education agency suggested a compelling interest in keeping Scotland Neck part of the Halifax County system.[55] Moreover, if the object is to improve the Scotland Neck schools, it would indeed be an anomaly if, in the face of a past history of racially disparate educational opportunities, see *Gaston County* v. *United States*, 395 U.S. 285, the state legislature could "by the simple expedient of labeling the two sets of schools as separate districts," 442 F. 2d at 598 (App. 1134), create a predominantly white district for schools to be "improved" and a separate, predominantly black district for the other schools. *Plessy* v. *Ferguson*, 163 U.S. 537. On this record, the district court held that there was no state interest in improving the schools in that way. We be-

[54] See pp. 11–12, *supra*.

[55] The 1968 State Survey of Halifax County schools recommended precisely the opposite result to that achieved by Chapter 31. See pp. 5–7, *supra*.

lieve that finding was amply justified and that the court's judgment invalidating Chapter 31 should have been affirmed.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX A

Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6, provides:

§ 2000c–6. Civil actions by the Attorney General.

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants.

Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin.

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and

after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings.

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined.

The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

Appendix B

Chapter 31 of the 1969 Session Laws of North Carolina, is entitled and provides:

"An Act to Improve and Provide Public Schools of a Higher Standard for the Residents of Scotland Neck in Halifax County, to Establish the Scotland Neck City Administrative Unit, to Provide for the Administration of the Public Schools in Said Administrative Unit, to Levy a Special Tax for the Public Schools of Said Administrative Unit, All of Which Shall Be Subject to the Approval of the Voters in a Referendum or Special Election

"Section 1. There is hereby classified and established a public school administrative unit to be known and designated as the Scotland Neck City Administrative Unit which shall consist of the territory or area lying and being within the boundaries or corporate limits of the Town of Scotland Neck in Halifax County, and the boundaries of said Scotland Neck City Administrative Unit shall be coterminous with the present corporate limits or boundaries of the Town of Scotland Neck. The governing board of said Scotland Neck City Administrative Unit shall be known and designated as the Scotland Neck City Board of Education, and said Scotland Neck City Board of Education (hereinafter referred to as: Board) shall have and exercise all of the powers, duties, privileges and authority granted and applicable to city administrative units and city boards of education as set forth in Chapter 115 of the General Statutes, as amended.

"SEC. 2. The Board shall consist of five members appointed by the governing authority of the Town of Scotland Neck, and said five members shall hold office until the next regular municipal election of the Town of Scotland Neck to be held in May, 1971. At the regular election for Mayor and Commissioners of the Town of Scotland Neck to be held in May 1971, there shall be elected five members of the Board, and three persons so elected who receive the highest number of votes shall hold office for four years and he two persons elected who receive the next highest number of votes shall hold office for two years, and thereafter all members of the Board so elected, as successors, shall hold office for four years. All members of the Board shall hold their offices until their successors are elected and qualified. All members of the Board shall be eligible to hold public office as required by the Constitution and laws of the State.

"SEC. 3. All members of the Board shall be elected by the qualified voters of the Town of Scotland Neck and said election shall be held and conducted by the governing authority of the Town of Scotland Neck and by its election officials and pursuant to the same laws, rules and regulations as are applicable to the election of the municipal officials of the Town of Scotland Neck, and the results shall be certified in the same manner. The election of members of the Board shall be held at the same time and place as applicable to the election of the Mayor and Board of Commissioners of the Town of Scotland Neck and in accordance with expiration of terms of office of members of the Board. The members of the Board so elected shall be inducted into office on the first Monday following the date of election, and the expense of th election of the members of the Board shall be paid by the Board.

"SEC. 4. At the first meeting of the Board appointed as above set forth and of a new

Board elected as herein provided, the Board shall organize by electing one of its members as chairman for a period of one year, or until his successor is elected and qualified. The chairman shall preside at the meetings of the Board, and in the event of his absence or sickness, the Board may appoint one of its members as temporary chairman. The Scotland Neck City Superintendent of Schools shall be ex officio secretary to his Board and shall keep the minutes of the Board but shall have no vote. If there exists a vacancy in the office of Superintendent, then the Board may appoint one of its members to serve temporarily as secretary to the Board. All vacancies in the membership of the Board by death, resignation, removal, change of residence or otherwise shall be filled by appointment by the governing authority of the Town of Scotland Neck of a person to serve for the unexpired term and until the next regular election for members of the Board when a successor shall be elected.

"SEC. 5. All public school property, both real and personal, and all buildings, facilities, and equipment used for public school purposes, located within the corporate limits of Scotland Neck and within the boundaries set forth in Section 1 of this Act, and all records, books, moneys budgeted for said facilities, accounts, papers, documents and property of any description, shall become the property of Scotland Neck City Administrative Unit or the Board; all real estate belonging to the public schools located within the above-described boundaries is hereby granted, made over to, and automatically by force of this Act conveyed to the Board from the County public school authorities. The Board of Education of Halifax County is authorized and directed to execute any and all deeds, bills of sale, assignments or other documents that may be necessary to completely vest title to all such property in the Board.

"SEC. 6. Subject to the approval of the voters residing within the boundaries set forth in Section 1 of this Act, or within the corporate limits of the Town of Scotland Neck, as hereinafter provided, the governing authority of the Town of Scotland Neck, in addition to all other taxes, is authorized and directed to levy annually a supplemental tax not to exceed Fifty Cents (50¢) on each One Hundred ($100.00) Dollars of the assessed value of the real and personal property taxable in said Town of Scotland Neck. The amount or rate of said tax shall be determined by the Board and said tax shall be collected by the Tax Collector of the Town of Scotland Neck and paid to the Treasurer of the Board. The Board may use the proceeds of the tax so collected to supplement any object or item in the school budget as fixed by law or to supplement any object or item in the Current Expense Fund or Capital Outlay Fund as fixed by law.

"SEC. 7. Within ten days from the date of the ratification of this Act it shall be the duty of the governing authority of the Town of Scotland Neck to call a referendum or special election upon the question of whether or not said Scotland Neck City Administrative Unit and its administrative board shall be established and whether or not the special tax herein provided shall be levied and collected for the purposes herein provided. The notice of the special election shall be published once a week for two successive weeks in some newspaper published in the Town of Scotland Neck or having a general circulation in the Town of Scotland Neck. The notice shall contain a brief statement of the purpose of the special election, the area in which it shall be held, and that a vote by a majority of those voting in favor of this Act will establish the Scotland Neck City Administrative Unit and its Administrative Board as

herein set forth, and that an annual tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property, according to each One Hundred Dollars ($100.00) valuation, the rate to be fixed by the Board, will be levied as a supplemental tax in the Town of Scotland Neck, for the purpose of supplementing any lawful public school budgetary item. A new registration of voters shall not be required and in all respects the laws and regulations under which the municipal elections of the Town of Scotland Neck are held shall apply to said special election. The governing authority of the Town of Scotland Neck shall have the authority to enact reasonable rules and regulations for the necessary election books, records and other documents for such special election and to fix the necessary details of said special election.

"SEC. 8. In said referendum or special election a ballot in form substantially as follows shall be used: VOTE FOR ONE:

(☐) FOR creating and establishing Scotland Neck City Administrative Unit with administrative Board to operate public schools of said Unit and for supplemental tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property according to each One Hundred Dollars ($100.00) valuation for objects of school budget.

(☐) AGAINST creating and establishing Scotland Neck City Administrative Unit with administrative Board to operate public schools of said Unit and against supplemental tax not to exceed Fifty Cents (50¢) on the assessed valuation of real and personal property according to each One Hundred Dollars ($100.00) valuation for objects of school budget.

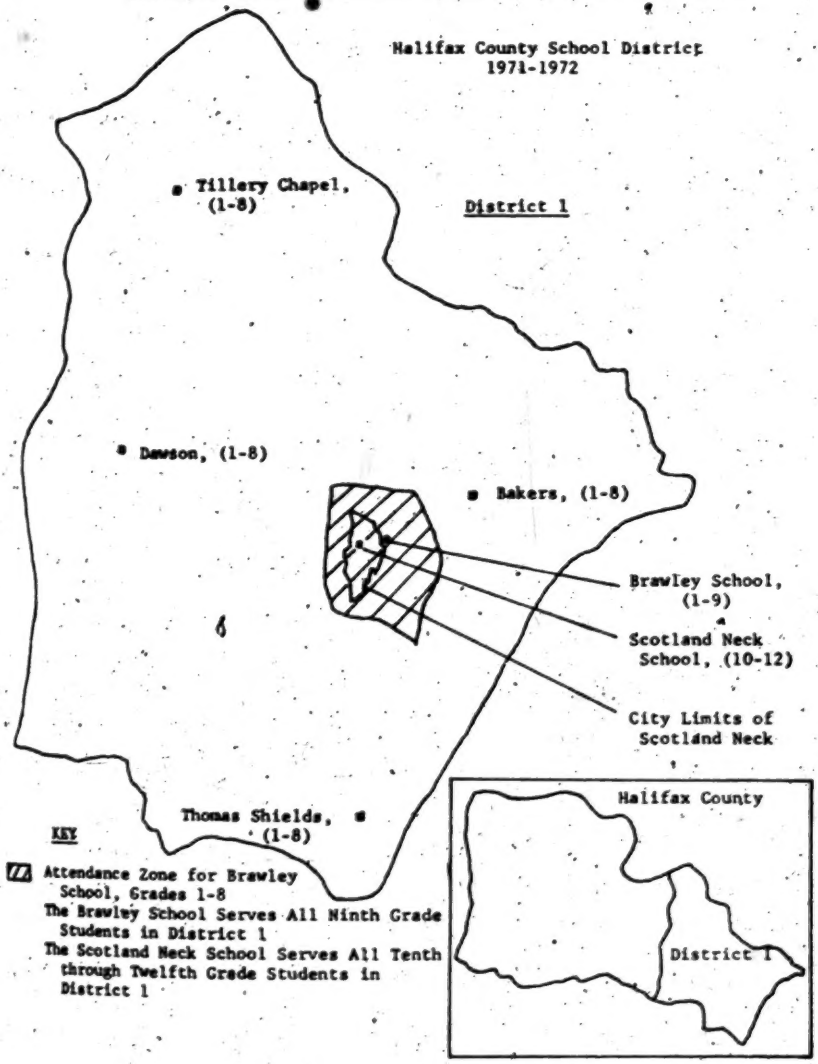
"If a majority of the qualified voters voting at such referendum or special election vote in favor of establishing Scotland Neck City Administrative Unit, for creation of administrative Board to operate public schools of said Unit and for special supplemental tax as herein set forth, then this Act shall become effective and operative as to all its provisions upon the date said special election results are canvassed and the result judicially determined, otherwise to be null and void. The expense of said referendum or special election shall be paid by the governing authority of the Town of Scotland Neck but if said Unit and Board are established, then said Town of Scotland Neck shall be reimbursed by the Board for said expense as soon as possible.

"SEC. 9. All laws and clauses of laws in conflict with this Act are hereby repealed.

"SEC. 10. This Act shall be in full force and effect according to its provisions from and after its ratification."

APPENDIX C

ATTENDANCE ZONES FOR BRAWLEY SCHOOL AND SCOTLAND NECK SCHOOL


Halifax County School District
1971-1972
Tillery Chapel, (1-8)
District 1
Dawson, (1-8)
Bakers, (1-8)
Brawley School, (1-9)
Scotland Neck School, (10-12)
City Limits of Scotland Neck
Thomas Shields, (1-8)
KEY
Attendance Zone for Brawley School, Grades 1-8
The Brawley School Serves All Ninth Grade Students in District 1
The Scotland Neck School Serves All Tenth through Twelfth Grade Students in District 1
Halifax County
District 1

U.S. GOVERNMENT PRINTING OFFICE: 1971